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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 NAPOLEON PEDRAZA,
12 Plaintiff,

13 v.

14 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
15 Defendant.
16

Case No. 8:13-cv-01847-MAA

**ORDER GRANTING PLAINTIFF'S
COUNSEL'S MOTION FOR
ATTORNEY FEES PURSUANT TO
42 U.S.C. § 406(b)**

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18 Now pending before the Court and ready for decision is the Motion for
19 Attorney Fees pursuant to 42 U.S.C. § 406(b) ("Motion") filed on June 21, 2018 by
20 Plaintiff's counsel, Bill LaTour. The Motion seeks an award of attorney fees in the
21 gross amount of \$12,490.25, subject to a reimbursement to Plaintiff for the
22 \$2,150.00 in fees previously paid pursuant to the Equal Access to Justice Act
23 ("EAJA"), 28 U.S.C. § 2412. Plaintiff's counsel seeks compensation for 18.82
24 hours of combined attorney and paralegal time rendered in connection with
25 Plaintiff's representation before the Court in this case, with an effective hourly rate
26 of approximately \$664.00.

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1 On July 3, 2018, the Commissioner filed a response to the Motion in which
2 the Commissioner did not take a position on whether the amount of fees sought by
3 Plaintiff's counsel was reasonable, but rather merely purported to provide an
4 analysis of the fee request in her role "resembling that of a trustee" for Plaintiff.¹

5 Plaintiff did not file a response to the Motion, despite being afforded the
6 opportunity to do so.

8 DISCUSSION

9 The Motion is brought pursuant to 42 U.S.C. § 406(b) ("Section 406(b)"),
10 which provides in pertinent part:

11 Whenever a court renders a judgment favorable to a
12 claimant under this subchapter who was represented before
13 the court by an attorney, the court may determine and allow
14 as part of its judgment a reasonable fee for such
15 representation, not in excess of 25 percent of the total of the
16 past-due benefits to which the claimant is entitled by reason
17 of such judgment.

18 In *Gisbrecht v. Barnhart*, 535 U.S. 789 (2002), the Supreme Court resolved a
19 division among the Circuits on the appropriate method of calculating fees under
20 Section 406(b). Rejecting the "lodestar method" that several of the Circuits
21 (including the Ninth Circuit) had been applying, the Supreme Court held:

22 [Section] 406(b) does not displace contingent-fee
23 agreements as the primary means by which fees are set for

24 ¹ The Supreme Court so characterized the Commissioner's role in *Gisbrecht v.*
25 *Barnhart*, 535 U.S. 789, 798 n.6 (2002). For this proposition, the Supreme Court
26 cited as an example *Lewis v. Secretary of Health and Human Servs.*, 707 F.2d 246,
27 248 (6th Cir. 1983), where the Sixth Circuit had observed: "In view of the
28 humanitarian policy of the Social Security program to benefit the disabled, we agree
that the Secretary 'retains an interest in the fair distribution of monies withheld for
attorney's fees.'" In the Court's view, the Acting Commissioner does not properly
fulfill her role by merely regurgitating what plaintiff's counsel is seeking.

1 successfully representing Social Security benefits claimants
2 in court. Rather, [Section] 406(b) calls for court review of
3 such arrangements as an independent check, to assure that
4 they yield reasonable results in particular cases. Congress
5 has provided one boundary line: Agreements are
6 unenforceable to the extent that they provide for fees
7 exceeding 25 percent of the past-due benefits. . . . Within
8 the 25 percent boundary, . . . the attorney for the successful
9 claimant must show that the fee sought is reasonable for the
10 services rendered.

11 *Gisbrecht*, 535 U.S. at 807.

12 Noting the claimants' concession, the Supreme Court clarified that Section
13 406(b) creates no presumption in favor of the negotiated fee:

14 [A]lthough section 406(b) permits an attorney to base a fee
15 application on a contingent fee agreement with the claimant,
16 the statute does not create any presumption in favor of the
17 agreed upon amount. To the contrary, because section
18 406(b) requires an affirmative judicial finding that the fee
19 allowed is "reasonable," the attorney bears the burden of
20 persuasion that the statutory requirement has been satisfied.

21 *Id.* at 807 n.17 (quoting Brief for Petitioners at 40).

22 The Supreme Court then provided three examples of when a reduction from
23 the fee yielded by the contingent fee agreement might be warranted: (1) when the
24 representation was substandard; (2) when delay attributable to the plaintiff's
25 counsel resulted in the accumulation of benefits during the pendency of the case in
26 court; and (3) when the benefits were so large in comparison to the amount of time
27 counsel spent on the case that a "windfall" to counsel would result. *See id.* at 808.

1 The seminal Ninth Circuit case dealing with post-*Gisbrecht* Section 406(b)
2 fee applications is *Crawford v. Astrue*, 586 F.3d 1142 (9th Cir. 2009) (*en banc*).
3 *Crawford* involved a consolidation of three appeals from Central District of
4 California decisions (hereinafter “*Trejo/Haley*,” “*Crawford/Shapiro*,” and
5 “*Washington/Cho*”). In *Trejo/Haley*, the plaintiff’s counsel had expended 26.9
6 hours of her own time and 2.6 hours of paralegal time on the case, and requested a
7 fee of \$24,000, which represented 13.94% of the past-due benefits awarded.² *See*
8 *Crawford*, 586 F.3d at 1145. In *Crawford/Shapiro*, the plaintiff’s counsel had
9 expended 19.5 hours of his own time and 4.5 hours of paralegal time on the case,
10 and requested a fee of \$21,000, which represented 16.95% of the past-due benefits
11 awarded.³ *See id.* In *Washington/Cho*, the plaintiff’s counsel had expended 17.45
12 hours of his own time and 4.7 hours of paralegal time on the case, and requested a
13 fee of \$11,500.00, which represented 15.12% of the past-due benefits awarded.⁴
14 *See id.* at 1146. In each instance, after calculating the enhancement that the
15 requested fee represented when compared to the “lodestar” fee yielded by
16 multiplying the time expended by the attorney’s reasonable hourly rates, the
17 respective district courts concluded that awarding the requested fee would amount

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19 ² According to the fee application, the effective hourly rates sought in
20 *Trejo/Haley* were \$855.50 for attorney time and \$379.61 for paralegal time. (*See*
21 Motion for Attorney Fees at 7, *Trejo v. Barnhart*, No. 2:98-cv-05662-RNB (C.D.
22 Cal. July 6, 2006), ECF No. 17.)

23 ³ Although the plaintiff’s counsel in *Crawford/Shapiro* did not specify the
24 effective hourly rates sought in his fee application, the Commissioner construed the
25 fee application as seeking hourly rates of \$968.16 for attorney time and \$464.73 for
26 paralegal time. (*See* Defendant’s Response to Counsel’s Motion for Attorney Fees
27 at 4, *Crawford v. Barnhart*, No. 2:00-cv-11884-AN (C.D. Cal. Feb. 21, 2006), ECF
28 No. 24.) Plaintiff’s counsel did not dispute the Commissioner’s calculation of the
effective hourly rates sought. (*See generally* Reply in Support of Motion for
Attorney Fees, *Crawford v. Barnhart*, No. 2:00-cv-11884-AN (C.D. Cal. Feb. 21,
2006), ECF No. 25.)

⁴ According to the fee application, the hourly rates sought in *Washington/Cho*
were \$583.58 for attorney time and \$280.11 for paralegal time. (*See* Motion for
Attorney Fees at 7, *Washington v. Barnhart*, No. 2:03-cv-06884-AN (C.D. Cal.
Apr. 6, 2006), ECF No. 16.)

1 to a “windfall” for the plaintiff’s counsel and awarded a lesser enhancement. The
2 Ninth Circuit held that this methodology employed by the district courts did not
3 comport with the mandate of *Gisbrecht* “to respect the primacy of lawful attorney-
4 client fee agreements.” *See id.* at 1150.

5 After concluding that the districts courts had erred in their methodology, the
6 Ninth Circuit did not remand for reconsideration of whether the plaintiff’s counsel
7 in each case had met their burden under *Gisbrecht* of showing that the fee sought
8 was reasonable for the services rendered. Instead, the Ninth Circuit held that the
9 attorneys “had met their burden to demonstrate that the fees they requested were
10 reasonable.” *See Crawford*, 586 F.3d at 1151. The Ninth Circuit based this holding
11 on three considerations:

12 First, no reduction in fees due to substandard performance
13 was warranted. Nothing in the district courts’ opinions
14 suggests that counsels’ performance was anything other than
15 excellent. In each case, the attorneys demonstrated (and the
16 district courts found) that there was no evidence of fraud or
17 overreaching in the making of the 25% contingent-fee
18 agreements and that they provided high-quality
19 representation which resulted in their clients receiving
20 substantial past-due benefits. Second, no reduction in fees
21 for dilatory conduct was warranted, as the attorneys in these
22 cases caused no excessive delay which resulted in an undue
23 accumulation of past-due benefits. Finally, the requested
24 fees, which were significantly lower than the fees bargained
25 for in the contingent-fee agreements, were not excessively
26 large in relation to the benefits achieved. In each case,
27 counsel voluntarily evaluated the fees in comparison to the
28 amount of time spent on the case. In each case, counsel

1 voluntarily reduced those fees substantially from the
2 allowable 25%. The attorneys will receive no percentage of
3 the substantial future benefits paid to the claimants
4 following their successful representation. The attorneys
5 assumed significant risk in accepting these cases, including
6 the risk that no benefits would be awarded or that there
7 would be a long court or administrative delay in resolving
8 the cases.

9 *Id.* at 1151-52.

10 Thus, *Crawford* can be construed as eliminating any discretion on the part of
11 a district court to reduce a Section 406(b) request where the following
12 considerations apply: (1) no reduction in fees due to substandard performance is
13 warranted and there is no evidence of fraud or overreaching in the making of the
14 25% contingent-fee agreement; (2) no reduction in fees for dilatory conduct is
15 warranted because the attorney did not cause excessive delay resulting in the
16 accumulation of benefits during the pendency of the case in court; and (3) no
17 reduction in fees to avoid a windfall is warranted because the requested fees are
18 “significantly lower than the fees bargained for in the contingent-fee agreement”
19 and “not excessively large in relation to the benefits achieved.”⁵

20 Here, the requested fees satisfy the *Gisbrecht* standard as construed by the
21 Ninth Circuit in *Crawford* for the following reasons:
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24 ⁵ The other bases for the Ninth Circuit’s finding regarding the third
25 consideration (e.g., the fact that “attorneys will receive no percentage of the
26 substantial future benefits paid to the claimants following successful representation,”
27 and the risk in accepting the cases that “there would a long court or administrative
28 delay in resolving the cases”) would apply in every social security case. Accordingly,
these other bases in themselves cannot be sufficient to satisfy counsel’s burden under
Gisbrecht of demonstrating that the fee being sought in his/her particular case is
reasonable.

1 • The contingent fee agreement does not overreach: Under the terms of
2 the contingent fee agreement between Plaintiff and his counsel, Plaintiff agreed that
3 the fee agreement allowed his attorney to:

4 apply for a full 25% of [her] back award for attorney fees
5 pursuant to 42 U.S.C. § 406(b) [for representing [her] in federal
6 district court], and that this amount is in addition to any fees he
7 receives pursuant to 42 U.S.C. § 406(a) [fee for representing me
8 before the Social Security Administration].

9 (Motion, Exh. 4.)

10 Nothing in the record suggests there was any fraud or overreaching by
11 Plaintiff's counsel in the making of this contingent fee agreement with Plaintiff.
12 Moreover, the effective hourly rate Plaintiff's counsel's seeks – \$664.00⁶ – does
13 not exceed the highest of the effective hourly rates that the *Crawford* court
14 implicitly held were reasonable and “not excessively large in relation to the
15 benefits achieved” (*i.e.*, \$968.16 in *Crawford/Shapiro*). Finally, the Court notes
16 that, although 25% of Plaintiff's total past due benefits (\$73,961.00) is \$18,490.25,
17 the gross award Plaintiff's counsel seeks – \$12,490.25 – falls well below the
18 *Gisbrecht/Crawford* boundary.

19 • The representation was not substandard: This is not an instance of
20 substandard representation. Indeed, the high quality of the representation provided
21 by Plaintiff's counsel is evidenced by the fact that, following an adverse ALJ
22 decision and a denial of review by the Appeals Council, Plaintiff's counsel
23 succeeded in convincing the Court in this action that a remand for further
24 administrative proceedings was warranted so that the ALJ could properly consider
25 the treating physician's opinion, which was presented for the first time to the
26 Appeals Council. (*See* ECF No. 16.) As a result, the ALJ issued a Fully Favorable

27 ⁶ Calculated by dividing the requested fee (\$12,490.25) by the total hours
28 worked on the case (18.82, based on 9.65 attorney hours and 9.17 paralegal hours).

1 decision and Plaintiff ultimately received a past-due benefits award of \$73,961.00.
2 (See Motion, Exhs. 7, 9.)

3 • There is no evidence of unnecessary delay: The Court further finds
4 that this is not an instance where, due to excessive delay attributable to Plaintiff's
5 counsel, the past-due benefits accumulated during the pendency in court of this
6 action. To the contrary, the Court's review of the docket in this case (Case No.
7 8:13-cv-01847) reveals that Plaintiff's counsel moved the case along as ordered by
8 the Magistrate Judge then assigned, expeditiously meeting all deadlines, requesting
9 no extensions along the way, and ultimately obtaining a Decision and Order in
10 approximately 15 months.

11 • The requested fees do not represent a windfall to Plaintiff's counsel:
12 This is not the "windfall" situation contemplated in *Gisbrecht* that could justify a
13 reduction from the fee agreement. To the contrary, the requested fees (\$12,490.25)
14 are significantly lower (almost 32% lower) than the fees bargained for in the
15 contingent fee agreement (\$18,490.25). In addition, the requested fees are not
16 excessively large in relation to the benefits achieved. Indeed, the 16.88% fees-to-
17 benefits ratio falls well within the ratios that the *Crawford* court approved: 13.94%
18 in *Trejo/Haley*, 16.95% in *Crawford/Shapiro*, and 15.12% in *Washington/Cho*.

19 On this basis, the Court has concluded that *Crawford* compels it to find that
20 Plaintiff's counsel has met his burden to demonstrate that the fee requested is
21 reasonable.

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1 Accordingly, the motion of Plaintiff's counsel for attorney fees pursuant to
2 Section 406(b) in the gross amount of \$\$12,490.25 is **GRANTED**. This amount is
3 subject to an offset for the \$2,150.00 in fees previously paid pursuant to EAJA.
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5 IT IS SO ORDERED.
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7 DATED: August 7, 2018
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12 MARIA A. AUDERO
13 UNITED STATES MAGISTRATE JUDGE
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